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By email and overnight mail

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, Massachusetts 02110

Re: DTE 03-60 – Triennial Review Order

Dear Secretary Cottrell:

MCI, Inc. (“MCI”) submits the following letter in support of the motions filed by AT&T and ACN, *et al* seeking an order from the Department requiring Verizon Massachusetts to continue providing unbundled network elements (“UNEs”) and UNE combinations, at approved TELRIC rates, until the Department approves appropriate changes to Verizon’s interconnection agreements with MCI and other CLECs or until a negotiated commercial agreement is concluded.

The mandate of the D.C. Circuit in *USTA II* will be issued on or after June 15, 2004. To date, Verizon has not clearly and unambiguously stated to the Department that it will continue offering UNEs and UNE combinations at TELRIC rates until the effective date of approved amendments to its interconnection agreements and changes to its Massachusetts wholesale tariff. Given this failure and the irreparable harm that will result to local competition in Massachusetts if Verizon were to unilaterally alter its interconnection agreements on or after June 15th by

discontinuing certain UNEs or UNE combinations and/or unilaterally increasing its UNE rates, it is incumbent upon the Department to grant the emergency relief requested by the moving parties. MCI cannot reasonably expect to survive in the local residential and small business markets in Massachusetts if Verizon is permitted – even on a temporary basis --to increase the rates or limit the availability of the UNE Platform combination. The need for Department intervention could not be more compelling.

In analyzing Verizon's legal obligations upon the expected issuance of the *USTA II* mandate, it is important to review with precision what the D.C. Circuit Court decision did, and what it did not do. The *USTA II* decision **did** vacate the FCC's unbundling rules and remand the case back to the FCC to revise and implement new rules that are consistent with the Court's decision. The Court's decision **did not** free Verizon of its unbundling obligations. *USTA II* did not relieve Verizon and the other ILECs of their unbundling obligations under sections 251 and 271 of the Communications Act. *USTA II* did not make any findings of non-impairment with respect to particular UNEs where the FCC had found impairment to exist. Indeed, as AT&T correctly observes in its motion, the *USTA II* court declined to adopt the broad relief sought by Verizon, i.e. a transition plan to do away with UNE-P if the FCC failed to adopt new unbundling rules within 45 days of the Court's decision.

Further, the *USTA II* decision did not in any fashion alter Verizon's obligations under its interconnection agreements between Verizon and MCI and other CLECs, including its obligations to adhere to contractual change of law provisions. In addition, *USTA II* did not (and could not) alter Verizon's obligations to provide UNEs under Massachusetts law, as reflected in

the offerings contained in Verizon's Tariff No. 17. Discontinuance of wholesale offerings contained in this tariff can only be accomplished by compliance with Massachusetts law and a decision by the Department, after appropriate process. Finally, *USTA II* does not (and could not) alter Verizon's obligations under the merger conditions that it agreed to and were adopted by the FCC as a condition for approval of the Bell Atlantic/GTE merger. These conditions require Verizon to continue offering UNEs until a final and unappealable order of the FCC adopting new UNE rules becomes effective.

Verizon is well aware of the limited legal effect of the issuance of the mandate by the D.C. Circuit. The Department needs to look no further than the exchange between Verizon's counsel and the bench at oral argument before the D.C. Circuit, which exchange is quoted in AT&T's motion. AT&T Motion, pp. 13-14. Verizon's counsel acknowledged on the record that a decision by the Court would not relieve Verizon of its obligations under its interconnection agreements. Indeed, why else has Verizon filed a petition for consolidated arbitration with the Department to implement the purported changes in law required by the FCC's *TRO*? Verizon knows that the *TRO* is not self-effectuating, as the FCC clearly stated in its order. *TRO*, par. 701. The FCC was very clear: "Thus, to the extent our decision in this Order changes carriers' obligations under section 251, we decline the request of several BOCs that we override the section 252 process and unilaterally change all interconnection agreements to avoid any delay associated with renegotiation of contract provisions." *Id.*

As AT&T notes in its motion, several states (Connecticut, Rhode Island, Washington and Texas) have already recognized the need for an order directing the ILECs to preserve the status quo pending final action on changes to interconnection agreements. Since AT&T's motion was

filed with the Department, the Michigan and West Virginia commissions have also issued similar orders.¹

The Department should expeditiously add Massachusetts to the list of states that recognize the need to ensure marketplace certainty by preventing unilateral and premature attempts by the ILEC to modify its contractual obligations to provide UNEs and UNE combinations at approved rates. MCI urges the Department to grant the relief requested in the pending motions.

Respectfully submitted,

Richard C. Fipphen

Cc: Paula Foley, Assistant General Counsel, DTE
Michael Eisenberg, Director, Telecommunications Division
Service List

¹ *In the matter of a request for declaratory ruling, or in the alternative, complaint of Comptel/ASCENT Alliance, et al.*, Michigan PSC Case No. U-14139, "Opinion and Order" (June 3, 2004); *Petition for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in West Virginia pursuant to Section 252 of the Communications Act of 1934, as Amended, and the Triennial Review Order*, West Virginia PSC Case No. 04-0359-T-PC, "Commission Order" (June 8, 2004).